IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.763 OF 2005

IN

SUIT NO.689 OF 2005

Arpan Leasing Co. Ltd. ...Plaintiff.

Vs.

1.Mr.Farhang Boman Khavar and

another. ...Defendants

Mr.Cyras Adreshir i/b. M/s.S.Ashwinikumar & Co., for Plaintiff.

None for defendants.

CORAM: D.K.DESHMUKH, J.

DATED: 26th April,2006

P.C.:-

1. This is a notice of motion taken out by the plaintiff. The learned Counsel appearing for plaintiff states that the defendants have been served. He undertakes to file affidavit of service within a period of one week from today. The

defendants are not appearing. They have not filed any reply. In the absence of any reply filed by the defendants, the averments made in the affidavit filed in support of notice of motion are to be taken at face value. I have been informed that by the order passed by the Appeal Court, the Receiver has already been appointed on the property and on failure of the defendants to execute agency agreement, this Court by order dated 31.3.2006 has directed the Receiver to take possession of the property from the defendants. Taking overall view of the matter therefore, in my opinion, following order would meet the ends of justice:-

(i) The Notice of motion is granted in terms of prayer clause (a) excluding bracketed portion.

(ii) As the defendants failed to execute agency agreement in terms of order dated 31.3.2006 passed by this Court as per the report submitted by the Receiver, the Receiver shall take physical possession of the property and hand over possession of the property to the plaintiff also as agent of the Receiver but without security and royalty. After possession is handed over to the plaintiff, the plaintiff shall be at liberty to take out appropriate

proceedings seeking further directions. The notice of motion is disposed of.